

1354.

OFFICES COMPATIBLE—MEMBER OF COUNTY BOARD OF EDUCATION AND VILLAGE CLERK IF PHYSICALLY POSSIBLE TO TRANSACT DUTIES OF BOTH.

SYLLABUS:

The offices of member of a county board of education and village clerk are compatible if it is physically possible for one person to transact the duties of both of such offices simultaneously.

COLUMBUS, OHIO, August 8, 1933.

HON. GRACE FERN HECK, *Prosecuting Attorney, Urbana, Ohio.*

DEAR MADAM:—This will acknowledge receipt of your letter of recent date which reads as follows:

“Your opinion is requested on the question as to whether or not the offices of Village Clerk and member of the County School Board are compatible.

Since there is some conflict in opinion on this question in this County, I will appreciate your opinion.”

Public offices are incompatible when made so by express provision of constitution or statute, or when rendered such by operation of the common law test of incompatibility.

An examination of the Ohio Constitution and statutes discloses no express provision which would prevent a village clerk from holding the office of member of a county board of education at the same time. The remaining question is, therefore, whether or not such a combination of offices may be held by one person simultaneously in view of the common law rule.

The common law test of incompatibility is well expressed in the case of *State, ex rel. vs. Gebert*, 12 C. C. (N. S.) at page 275, as follows:

“Offices are considered incompatible when one is subordinate to, or in any way a check upon, the other; or when it is physically impossible for one person to discharge the duties of both.”

After a study of the statutes providing for the duties of a member of a county board of education and of a village clerk; I am unable to see where these two offices are in anywise a check upon each other or that one is in any respect subordinate to the other.

It might be maintained that these offices are rendered incompatible by reason of provisions of the budget law (sections 5625-1, et seq.). Now a village is a subdivision within the budget law. See General Code 5625-1a. The clerk is the fiscal officer of his village. See General Code 5625-1d. As such fiscal officer he might be called before the county budget commission to explain the estimate of revenues filed for his village, when the said commission contemplates a paring of the various estimates of the political subdivisions of the county in order to adjust the county budget under section 5625-20, General Code.

In such a case it might be argued that if he were also a member of a county board of education the duties required of both offices would conflict. This contention, however, has been negated by a former opinion of this office, reported in the Opinions of the Attorney General for 1931, volume 1, page 145. In such opinion it was held as disclosed by the syllabus:

"An elector in a township may hold the position of township trustee and member of a county board of education at one and the same time."

It was pointed out in said opinion that members of a board of education and the township trustees might be called in by the budget commission for conferences and in such a situation persons who were members of both boards would appear as adversaries against themselves. In holding, however, that the same situation would not arise if a county board of education was involved, my immediate predecessor stated at page 146:

"No such reason, however, could be urged against the compatibility of membership on a county board of education and a township board of trustees for the reason that the county board of education is not a tax levying body and does not receive funds for its purpose from the budget commission but from moneys retained and set aside for that purpose by the county auditor."

The sole remaining question is whether or not it is physically possible for one person to hold these two positions. In my opinion No. 338, rendered under date of March 23, 1933, I held that it is a question of fact rather than of law whether or not it is physically possible for one person to occupy two given offices at one time.

Consequently, in specific answer to your question, I am of the opinion that the offices of member of a county board of education and village clerk are compatible if it is physically possible for one person to transact the duties of both of such offices simultaneously.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1355.

DISTRICT BOARD OF HEALTH—HEALTH COMMISSIONER—NO JURISDICTION OVER STATE-OWNED PROPERTY WITHIN POLITICAL SUBDIVISION.

SYLLABUS:

Neither local district boards of health nor local health commissioners have any general jurisdiction over state owned property in their political subdivisions.

COLUMBUS, OHIO, August 8, 1933.

HON. H. G. SOUTHARD, *Director of Health, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your communication which reads as follows: